

ASSEMBLY BILL

No. 2594

Introduced by Assembly Member Jones

February 19, 2010

An act to add Section 990 to the Civil Code, relating to copyrights.

LEGISLATIVE COUNSEL'S DIGEST

AB 2594, as introduced, Jones. Works of authorship: residual benefits.

Existing federal law, through copyright, provides authors of original works of authorship, as defined, with certain rights and protections. Existing federal law generally gives the owner of the copyright the right to reproduce the work in copies or phonorecords and the right to distribute copies or phonorecords of the work to the public. Existing federal law limits the liability of an Internet service provider for copyright infringement for transmitting material under specified conditions. Existing law also provides for the forfeiture and destruction of articles upon which sounds or images can be stored, and electronic and other devices used in reproducing those articles, in connection with a violation of provisions prohibiting misappropriation of recorded music, sounds of a live performance, or an audiovisual work, as specified.

This bill would authorize a person who is entitled to residual benefits from the proceeds generated by an original work of authorship, who has suffered economic harm as a result of the unauthorized distribution of that original work of authorship by a user of a network controlled or operated by an Internet service provider, and who provides written notification to the Internet service provider, as specified, to request a superior court to issue a subpoena to the Internet service provider, if within the jurisdiction of that court, for identification of the user of the Internet service provider's network who is responsible for the

unauthorized distribution of the original work of authorship. The bill also would require an Internet service provider, upon the written request of the person entitled to residual benefits, to prevent the further use of its network for unauthorized distribution of the original work of authorship.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 990 is added to the Civil Code, to read:
2 990. (a) This section applies to a person who meets all of the
3 following criteria:
4 (1) Is entitled to residual benefits from the proceeds generated
5 by an original work of authorship.
6 (2) Has suffered economic harm as a result of the unauthorized
7 distribution of that original work of authorship by a user of a
8 network controlled or operated by an Internet service provider.
9 (3) Provides written notification, in accordance with subdivision
10 (b), to the Internet service provider whose network is being used
11 for unauthorized distribution of the original work of authorship.
12 (b) The written notification required pursuant to paragraph (3)
13 of subdivision (a) shall include all of the following elements:
14 (1) Identification of the original work of authorship claimed to
15 have been infringed, or, if multiple original works of authorship
16 at a single online site are covered by a single notification, a
17 representative list of those original works of authorship at that
18 Internet site.
19 (2) Identification of the material that is claimed to be infringing
20 or to be the subject of infringing activity and that is to be removed
21 or access to which is to be disabled, and information reasonably
22 sufficient to permit the Internet service provider to locate the
23 material.
24 (3) Information reasonably sufficient to permit the Internet
25 service provider to contact the person described in subdivision (a),
26 including an address, telephone number, and, if available, an e-mail
27 address at which the person described in subdivision (a) may be
28 contacted.

1 (4) A statement that the person described in subdivision (a) has
2 a good faith belief that use of the material is not authorized by that
3 person, his or her agent, or the law.

4 (c) A person described in subdivision (a) may request a superior
5 court to issue a subpoena to an Internet service provider that is
6 within the jurisdiction of that court, for identification of the user
7 of the Internet service provider's network who is responsible for
8 the unauthorized distribution of the original work of authorship,
9 in accordance with all of the following:

10 (1) The request may be made by filing with the court all of the
11 following:

12 (A) A copy of the notification described in subdivision (b).

13 (B) A proposed subpoena.

14 (C) A sworn declaration to the effect that the purpose for which
15 the subpoena is sought is to obtain the identity of an alleged
16 infringer and that the information will only be used for the purpose
17 of protecting contractual rights to residual benefits.

18 (2) The subpoena shall authorize and order the Internet service
19 provider receiving the notification and the subpoena to
20 expeditiously disclose to the person described in subdivision (a),
21 or his or her agent, information sufficient to identify the alleged
22 infringer of the material described in the notification to the extent
23 that the information is available to the Internet service provider.

24 (3) If the notification filed satisfies the requirements of
25 subdivision (b), the proposed subpoena is in proper form, and the
26 accompanying declaration is properly executed, the court shall
27 expeditiously issue and sign the proposed subpoena and return it
28 to the person described in subdivision (a), or his or her agent, for
29 delivery to the Internet service provider.

30 (4) Upon receipt of the issued subpoena, either accompanying
31 or subsequent to the receipt of a notification described in
32 subdivision (b), the service provider shall expeditiously disclose
33 to the person described in subdivision (a), or his or her agent, the
34 information required by the subpoena, notwithstanding any other
35 law and regardless of whether the Internet service provider
36 responds to the notification.

37 (5) Unless otherwise provided by this section or by applicable
38 rules of the court, the procedure for issuance and delivery of the
39 subpoena, and the remedies for noncompliance with the subpoena,
40 shall be governed to the greatest extent practicable by state law

1 governing the issuance, service, and enforcement of a subpoena
2 duces tecum.

3 (d) Upon the written request of a person described in subdivision
4 (a), an Internet service provider shall prevent the further use of its
5 network for unauthorized distribution of the original work of
6 authorship.

7 (e) The following definitions apply for purposes of this section:

8 (1) “Internet service provider” means a provider of online
9 services or network access, or the operator of facilities therefor,
10 and includes an entity offering the transmission, routing, or
11 providing of connections for digital online communications,
12 between or among points specified by a user, of material of the
13 user’s choosing, without modification to the content of the material
14 as sent or received.

15 (2) “Original work of authorship” has the same meaning as
16 provided in Section 102 of Title 17 of the United States Code, as
17 it read on January 1, 2010.

18 (3) “Residual benefits” means proceeds payable to the author
19 of an original work of authorship pursuant to a contract with the
20 owner of the copyright to that original work of authorship.